

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

ROYALE LEE STEWART, #1039512,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 2:13cv388
	:	
HAROLD W. CLARKE, Director,	:	
Virginia Department of Corrections,	:	
	:	
Respondent.	:	

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner, Royale Lee Stewart, a Virginia inmate, was convicted in 1997 of capital murder, attempted robbery and two counts of use of a firearm in the commission of a felony. He filed a habeas petition under 28 U.S.C. § 2254, seeking resentencing on the capital murder charge for which he is currently serving a life sentence without parole. Because Stewart was 16 at the time of the offense, his petition argues that the United States Supreme Court decision in Miller v. Alabama, 132 S. Ct. 2455 (2012), which prohibits juveniles from receiving a mandatory sentence of life without parole, renders his life sentence unconstitutional.

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Amended Report and Recommendation filed March 13, 2014¹ recommends dismissal of the petition. Each party was

¹ The R&R was amended to correct a typographical error in subheading 1 on page 6 correcting the word “non-homicide” to “homicide.”


advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On March 31, 2014, the Court received petitioner's Objections to the Report and Recommendation. The respondent filed no response to the objections and the time for responding has now expired.

The Court, having reviewed the record and examined the objections filed by petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Amended Report and Recommendation filed March 31, 2014. It is, therefore, ORDERED that Respondent's Motion to Dismiss be GRANTED and the Petitioner's petition be DENIED and DISMISSED with prejudice.

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and counsel of record for respondent.

/s/ 
HENRY C. MORGAN, JR.
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
April 28, 2014